

Remarks

This application has been reviewed in light of the Office Action of October 2, 2003. Claims 1-5 and 7-20 are pending. Claims 7-16, 18, and 19 are allowed, and claims 1-5, 17, and 20 are rejected. In response, the following remarks are submitted.

Claims 1-5, 17, and 20 are rejected under 35 USC 103 over Sanghera US Patent 6,175,678 in view of Harootian US Patent 5,303,373. Applicant traverses this ground of rejection.

The following principle of law applies to all sec. 103 rejections. MPEP 2143.03 provides "To establish prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." [emphasis added] That is, to have any expectation of rejecting the claims over a single reference or a combination of references, each limitation must be taught somewhere in the applied prior art. If limitations are not found in any of the applied prior art, the rejection cannot stand. In this case, the applied prior art references clearly do not arguably teach some limitations of the claims.

Claim 1 recites in part:

"a detector...including a imaging detector array;  
an optical train that focuses the light energy of the scene; and  
an optical fiber bundle having an input end that receives the scene  
from the optical train and an output end that directs the energy of the  
scene onto the detector array"

That is, light energy passes through the optical train. From the optical train, the light energy enters the input end of the optical fiber bundle. The output end of the

optical fiber bundle directs the light onto the detector array

Sanghera does not teach this arrangement. As shown in Figures 1-2 and discussed at col. 5, lines 41-52, in Sanghera the light from the scene first passes through the optical fiber bundle 200, then through lenses 206, a bandpass filter 208, a focusing lens 210, and then to the FPA detector.

Claims 2-5 depend from claim 1 and incorporate its limitations.

Claims 17 and 20 have similar recitations. In each case recited in these claims, light energy passes in the order optical train to optical fiber bundle to detector array. As noted, Sanghera teaches that light energy passes in the order optical fiber bundle to optical train to detector array.

Claim 1 further recites in part:

“the scene energy from the optical train is mapped nonlinearly onto the detector array”

The explanation of the rejection does not find a teaching of this limitation in either reference. Instead, the explanation of the rejection asserts, “...the precise ordering of the optical fibers is an obvious design choice...” Applicant must disagree. The concept of “obvious design choice” is not intended to substitute for statutory prior art. It provides a means by which one of several realistic alternatives presented by statutory prior art may be selected, absent surprising or unexpected advantages. It is to be used only where the applied statutory prior art sets forth a list of realistic alternative selections, and it would be a matter of design choice to select one member from the list. In this case, the prior art of record presents no such design choice, and accordingly the application of “obvious design choice” is not appropriate here. This amounts to a “well known in the art” type of rejection. Applicant traverses this approach, and asks for the citation and application of proper statutory prior art or other evidence supporting the rejections, MPEP 2144.03. If the rejection is maintained, Applicant asks that the Examiner cite and apply statutory prior art, pursuant to MPEP 2144.03.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Applicant submits that the application is in condition for allowance, and requests such allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William Schubert", written over a horizontal line.

William Schubert

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